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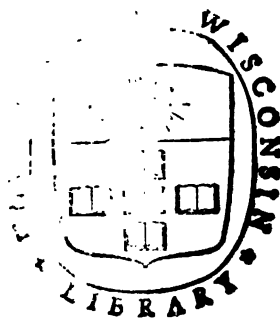
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THE GROWTH OF THE POPULAR FORCES IN COLONIAL MARYLAND

by

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Preface.

The material from which this paper was written is that found on the subject in the Wisconsin State, and University Libraries at Madison, Wisconsin. The Maryland Assembly and Council Records not being published for the period after 1693, the sources for the Eighteenth Century were not so full.

The paper is designed to show more connectedly and clearly the steady development of certain political tendencies than has been shown elsewhere.

Table of Contents.

- I. Introduction.
- II. The Establishment of Proprietary Government and the Division of Power between the Proprietary and the Assembly.
 1. The Political Ideas of the Founders.
 2. The Initiation of Government.
 3. The Initiation of Legislation.
 4. The Development of a Representative Assembly.
 5. The Separation into Two Houses.
 6. The Sessions of the Assembly and the Apportionment.
 7. The Early Franchise.
- III. The Legislative Power as a Restriction upon Proprietary Prerogative in General.
 1. The Claim of the Lower House to Powers in the Province Similar to those held by the Commons in England.
 2. The Contest over the Discretionary Power of the Judges in Using the English Law.
 3. The Resistance to Proprietary Veto.
- IV. The Legislative Power as a Restriction Upon Proprietary Prerogative through the Control of the Finances.
 1. The Proprietary's Revenues.
 2. Revenues to which both the Proprietary and the Assembly

laid claim.

3. Direct Taxation.

4. The Regulation of Fees.

V. The Political Parties and Party Methods in the Eighteenth Century.

1. The Proprietary Party.

2. The Popular Party.

3. Party Strife as Exhibited in the Contention over the Supply Bill.

VI. The Relation of the Colony to England.

1. Maryland and England till the French and Indian War.

2. Maryland and England during the French and Indian War.

3. The Resistance to Parliamentary Taxation for Revenue.

Conclusion.

I. Introduction.

To understand the federal constitution it is necessary to go back to the founding of the thirteen different colonies and to trace the political development of each down to the Revolution. By that time some of them were more than a hundred and fifty years old; each had worked out a government, and all had schooled their inhabitants in a large degree of political self-sufficiency. A common notion once prevailed that the spirit that animated the American Revolution sprang suddenly into being. But a careful study of colonial history reveals a different case. It substitutes for sudden inspiration a process of steady growth. In each colony the people were represented in government, and their representation gradually acquired such full control of state affairs, that by the time of the Revolution, the governors and their councils, appointed by authority from without, were looked upon as excrescences upon their political systems. The object of this paper is to show from her century and a half of colonial experience, the explanation of Maryland's decisive action in 1776.

Maryland was founded under a charter given by a king who held the most pronounced views of absolutism, to a royal fav-

orite with like views. The crown renounced all share in the government of the Province, requiring merely allegiance, and laws in harmony with the laws of England. A vague claim relative to a legislature, and a provision that the rights of Englishmen be secured the inhabitants, were inserted, and outside of this Baltimore was given jurisdiction of the land and government, which was made hereditary in his family. The charter allowed the Proprietary to determine the form of government, and unless he should relinquish his rights and interests in the Province, this form could not be democratic. Clearly a government, monarchical in form was intended. The Proprietary was to be as supreme as he could be while under allegiance to England aside from legislating with the consent of the freeman. But the form the assembly should take was left to him, and he could determine the qualifications for freemen.

Under this charter the colony was founded, and with some lapses remained under it till the Revolution. But in spite of provisions for securing proprietary rights, by that time, the government was monarchical only in form. The people had acquired so much power that for sometime before the outbreak, the Proprietary held his Province by a most precarious hold, and when the final resistance came he and Eng-

land were excluded together.

Step by step this ground was won.

From an article in the American Historical Review by Herbert L.Osgood, on Proprietary Governments in America the following quotations are taken:

"The province could not be democratized until the proprietary was gotten rid of."

"If the view here presented be true, the internal history of each of the provinces, royal as well as proprietary will reveal a prolonged struggle for ascendancy between the monarchical and democratic elements in the system, elements represented by the Proprietary and his governor on the one hand, and, usually, by the lower house of assembly on the other."¹

A study of the history of the Province of Maryland during the whole colonial period, reveals the existence of these two elements there in strong antagonism to each other. Their opposition was irregular and spasmodic during the 17th century, but developed into firmly organized resistance during the 18th. However, Mr.Osgood's statement must be broadened if made to cover the facts in Maryland. The people were struggling for a principle - the right to control

(1) Osgood, The Prop.Prov. A.H.R.II:654.

their own internal affairs. If the proprietor ignored their claim, he had to baffle their resistance, if England ignored it, she did. But aside from the enforcement of the Navigation Acts, and the period of royal government up to the French and Indian War England dictated but little, so that until that time the Proprietary and the people were usually left face to face. The Proprietary's notion of his prerogative differed so widely from that of the people, that the two clashed time and again. Through resistance at this point, by the time of the Revolution the people's party was so well marshalled that its force was readily turned against the crown. It was through resistance to a power outside the colonists' own creation that democratic forces developed. As time went on two parties ranged against each other, the monarchical represented politically by the proprietary and his council or by the crown, and the democratic, or peoples' party whose organ was the lower house of Assembly.

II The Establishment of Proprietary Government and the Division Of Power between the Proprietary and the Assembly.

1. The Political Ideas of the Founders of Maryland.

It was clearly the intention of the founders of Maryland that the government should be based on monarchical principles. The charter was given to Cecil Calvert, Second Lord Baltimore by Charles I in 1632, and Cecil Calvert put it into execution, but it had been negotiated by his father, George Calvert, who died just before it passed the seals.

George Calvert was a statesman of the royal school. He had been one of the principal secretaries of state to James I, and had been created by the King, Baron of Baltimore.¹ In 1621 he was a member of Parliament where he opposed parliamentary control of the colonies. His speech on this occasion has been preserved in abbreviated form. Chalmers has paraphrased it as follows:

MR. Sec. (Calvert) "That those foreign countries are not yet annexed to the crown of England, but are the king's as gotten by conquest: and therefore in such new countries the king may govern as he shall see fit....and he recommends to the consideration of the house whether we shall here make laws for the government of those parts."²

(1) Calvert Papers 41.

(2) Chalmers' Political Annals p 84

George Calvert was a member of the Virginia Company in 1609,¹ but he is not known to have taken part in its operations. As secretary of state he carried on the correspondence abrogating the Virginia Charter,² and it appears that his sympathy was rather with the one aristocratic corporation of the Plymouth Council than with the democratic Virginia Company.³ This is indicated by the provisions of his charters. Further he had practical experience in colonization, for in 1623 he founded his province of Avalon,⁴ and in 1627 went there himself.⁵ The Avalon charter was the precursor of Maryland's.

Of the absolutism of James I and Charles I it is unnecessary to speak. The old fief was chosen as the type for the proposed colonies, rather than the corporation. To this choice Calvert gave full accord. In the calendar of state papers is the entry:

"Power to Sir Geo. Calvert to make laws with the consent of the freeholders or without if they cannot be called together."⁶

He was a royal favorite, an aristocrat, a friend of

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- (1) I Brown's Genesis 214.
 - (2) I Sainsbury Calendar, 45, 46, 47.
 - (3) I Scarf's Maryland, 34, 53.
 - (4) I Sainsbury Cal., 35, 41, 42.
 - (5) Ib. 94. (6) I Sainsbury Cal. 42.

kingly prerogative. He had watched the colonization in Virginia, and failed to sympathize with the democratic forces which her government allowed to play. He knew all about the corporation, but he chose the old fief as the type for the government he proposed to establish. Calvert was an English statesman of the royal school. He had been a member of Parliament, where he is known to have acted in the interests of the king. He is said to have written his charters himself in Latin, and to have remodelled them to his mind.¹ This seems likely. The charters were as absolute as they could be considering the day and generation. Baltimore must yield allegiance to the English Monarch, as no Stuart would brook any other course, and he must respect the liberty of his proposed colonists, for no Englishman but was then jealous of his rights.

He had had enough experience in English politics to know that he could not induce men to undertake pioneer work in a state which offered less liberty than they enjoyed at home, so his plan appears to have been a compromise of his own monarchical views to meet the temper of his day. To gratify his own ideas of what a provincial government should be, he chose, or at least accepted, the Palatinate of Durham

(1) IBozman 239.

for his type. But he grafted upon this form of government a popular assembly intending to yield his absolutism so far. Calvert made provision for the growth of an aristocracy for the province was to be divided into manors, held by a lord with a body of tenants. There never had been an assembly in the Bishopric of Durham, but Baltimore's parliamentary experience and his personal knowledge of the hardships of pioneer life led him to see that he never could induce the middle class Englishmen of his day, much less the gentry whom he hoped to attract to forego the liberties of Englishmen. Hence the charter for Maryland provided for an assembly, though an assembly with but limited power. The Proprietary was to legislate with the "advice consent and approbation of the freemen." The Proprietary could determine determine who should be freemen.

A cursory glance at the charter will show how the powers and rights were distributed among the three elements, the crown, the Proprietary, and the people. It reserved to the king allegiance and in token of this two Indian arrowheads were to be paid yearly¹, and required all laws should be in harmony with those of England.²

The proprietary rights Scarf has listed as follows:

(1) The royal receipt for the first two may be found in the Calvert Papers I:54. (2) Scarf 55.

Territorial:- all the land and islands ten leagues from the shore for himself and heirs.

Legislative: The right to make all laws public and private with the assent of the freemen: and ordinances (not impairing life, limb, or property) without their consent.

Judicial: The right to establish courts of justice of various kinds, to appoint all judges, magistrates, and civil officers; also to execute the laws, even to the extent of taking life.

Regal: The right to confer titles etc., to erect towns and ports of entry etc., to pardon offences.

Ecclesiastical: To erect and found churches etc. and to have their patronage and advowson.

Military: The right to call out and arm the whole fighting population, to wage war....and to exercise martial law in case of insurrection in rectum.

Financial: The right to alienate, sell or rent the land. To levy duties or tolls on ships and merchandise.¹

To the people were given the right to remain English subjects, to have freedom of travel in English ports, to be free from crown taxation and to participate in law-making.

So uneven a distribution of privileges among Englishmen

(1)I Scarf's Maryland, 61.

of the seventeenth century was not likely to pass long unchallenged. As soon as the constitution was put into operation, each side began to interpret to its own advantage. It took twenty-five years for this frame of government to become adjusted, and in the course of this adjustment several Proprietary prerogatives were yielded and the way opened for further encroachment.

2. The Initiation of Government.

The charter was given to Lord Baltimore as sole proprietary, hence, as Mr. Osgood has shown, the initiative must come from him.¹ He issued commissions to his governor, in which he declared his purposes. Lord Baltimore did not accompany his colony, but made his brother his deputy and sent him. The first commission given, containing directions as to the voyage and selection of site, has no political significance save as showing the paternalism of the enterprise. Upon landing the governor was to gather the freemen together and acquaint them with the proprietary's intention regarding the Province. All control was in the governor's hands, and he appears to have kept order himself. Additional directions were sent him from time to time.

3. The Initiation of Legislation.

The first assembly met February 26, 1635², but under what authority does not appear. Its records are lost, but it is known that it drew up a code of laws, and submitted it to the Proprietary's approval, and that he annulled the same.³ The Proprietary then directed the governor to call an assem-

(1) Prop. Province Osgood, II American Hist. Review, 1897.

(2) I Assem. 23. (3) I Council 50.

bly, and to lay before it a code which he had prepared for its assent. The struggle for the initiative of legislation was now on. The charter provided that the Proprietary should legislate with the assent, approbation, and approval "of the assembly." The assembly met January 25, 1638.¹ The draft of laws sent over by Lord Baltimore was read and after discussion was put to the vote. The discussion is not recorded. What the tenor was can only be inferred. Neither on the Proprietary's side nor on the assembly's is mention made of the right of initiation, but in action both were struggling for this, and the practical outcome settled the question, whatever reason may have given rise to the contention. The only comments on these laws and upon the second set that the Proprietary disallowed, are found in two letters in the Calvert Papers. Capt. Cornwallys wrote to Lord Baltimore that neither his code nor the Assembly's protected the colony against a tyrannous governor², and Thomas Copley, one of Baltimore's agents, in a letter dated April 3, 1638, wrote as follows:

.... "Now therefore.... I will give your lordship some account touching the last assembly and the proceedings thereof.

(1) I Assem. 2.

(2) I Calvert Papers, 173.

"Touching the laws which your lordship sent I am told that they would not be accepted. And even the governor and Mr. Lewger said once to me that they were not fit for this colony. I never so much as read them neither do I yet know what they contained. The laws which now are sent to your lordship....and being haste to send them I only got a hasty view of them. Yet divers things even in that hasty reading occurred to me which I conceived requisite to acquaint you with, leaving them to your lordship's more serious consideration." He then says that the assembly undertake to regulate land claims and to tax.¹ The Proprietary's code was put to the question with the following result:

"Affirmed by the President or governor and Mr. Lewger, Sec. being with their proxies fourteen votes. Denied by all the rest being with their proxies thirty-seven votes."²

The colonists were prepared to hold their ground. They were ready with expedients and devices.

"Then the question was moved under what laws the province should live until they heard from England, and it was suggested....that they should agree upon some temporary measures. The president denied any such power in the house. Capt. Cornwallys suggested they live under the laws of England

(1) Calvert Papers 158. (2) Assem. 8.

The president agreed he could use the laws of England for civil cases, but not for criminal....The laws of the province were to provide for such cases. Whereupon his commission was produced and he found to be right. To this they answered that such enormous offences were not likely to be committed without mutiny, and then such might be punished by martial law.¹

More significant still, showing the assembly's attitude of mind was its trial of Claiborne and Smith who had committed depredation in their effort to hold Kent Island. Although the Proprietary had annulled their laws, and they in turn had annulled his, and although the governor had refused to allow them a temporary code and declared his instructions permitted him to use the English laws in civil cases only, yet the freemen, apparently with the governor's acquiescence, resolved itself into a court and tried and condemned Claiborne and Smith under an English law for felony, approved by them in the code that the proprietary had annulled.²

After disapproving the Proprietary's code, the assembly drew up another to be submitted to him. The titles only of their laws remain.³ Lord Baltimore vetoed them, but at the same time yielded for the future by the following com-

(1) IAssem. 9.

(2) IAssem. 23 Bozman calls attention to this.

(3) IAssem. 15 18

mission to the governor dated August 21, 1638:

"I do hereby give you full power and authority in every general assembly summoned by you in the Province of Maryland in my name to give assent unto all such laws as you shall think fit and necessary for the good of the province of Maryland and which shall be assented unto and approved by the freemen of that province or the major part of them or their deputies."¹

This was the first popular victory, the initiation of legislation was secured to the freemen, and the third assembly called in 1639 proceeded to make its own laws. The Proprietary, however, reserved for himself and his heirs the right of vetoing at any future time.² He also, events proved, expected a share in the initiative, but only one further attempt to impose a code is found. Aside from this he introduced measures through the governor or council. Regarding this code which he proposed later in 1649 the assembly wrote to him:

"Besides your honor's direction being such that none of the said body are to be recorded by us without the whole body should be received by us without alteration, addition or diminution....whereof we find in several parts....such things as

(1) IAssem.31.

(2) IAssem.31.

are not convenient.....have thought it best not to meddle at all in the aforesaid laws."

After reading them carefully they said:

"in conclusion, finding them so long and tedious containing withal so many several branches and clauses that in prudence we cannot yet with safety to ourselves and our posterity concur to the enacting of them as laws - being they are to be perpetual." -

"We humbly request your lordship hereafter to send us no more such bodies of laws, which serve to little other end than to fill our heads with suspicions, jealousies and dislikes of that which verily we understand not. Rather we shall desire your lordship to send us some short heads of what is desired and then we do assure your lordship of a most forward willingness in us to give your governor all just satisfaction."¹

4. Development of a Representative Legislature.

The assembly of 1635 was in all probability a primary assembly, that of 1638 is known to have been such. By 1638 there were two centers of settlement in the infant colony, St. Mary's on the western side of the bay where those

(1) IAssem. 241, 242.

sent over by Baltimore were gathered, and Kent Island, settled by Claiborne from Virginia. These last were resisting Baltimore's authority, but he had put a commander over them, and as the instructions show, tried to induce them to attend the assembly. The men of Kent were summoned by the governor, through his officer, the commander. So many as pleased were to repair personally to St. Mary's, the rest might send as many deputies as the major part of them should agree upon.¹ The freemen about St. Mary's were called by "writs of summons,"² issued personally. The instructions just alluded to appointed three men to act on council to the governor³, but these appear to have attended this assembly simply as freemen.⁴ There were present at the first meeting of the first assembly the governor, the secretary, the other two councillors whom Baltimore had appointed, and twenty-five freemen. These present acted as proxies for many who did not attend. Seven neither appeared nor sent proxies.⁵ The charter, and the instructions regarding this assembly allowed either the freemen in person, their delegates, or deputies. The proxy arrangement was not provided for, simply counteranced. Bozman says of the practice:⁶

(1) I Assem. 1. (2) I Assem. 2. (3) I Council 53.
 (4) I Assem. 2. (5) I Assem. 4.
 (6) II Bozman's Hist. Maryland 49.

"So allowing every freeman in Maryland to have a seat in the assembly, sitting there of his own right he might make a proxy upon the same principle as a lord in England."

That this assembly was so composed is shown by the following instances found in its records.

"Then was proclaimed that all freemen omitted in the writs of summons that could claim a voice in the general assembly should come and make their claim. Then appeared John Robinson, carpenter, and was admitted."¹

"Capt. John Langford of the Isle of Kent, High Constable of the said island, who had given a voice in the choice of Robert Philpot gentleman, to be one of the burgesses for the freemen of that island, desired to revoke his voice and be personally present in the assembly and was admitted."³

The third assembly in 1639, was composed of the governor, representatives chosen by the people, and "particular gentlemen" summoned by special writs.⁴

By this time the province was divided into several hundreds. The hundred was under a sheriff or constable appointed by the governor. To these officers orders were sent commanding them to gather the freemen together in their respective hundreds and bid them choose two or more "dis-

(1) I Assem. 4. (3) I Assem. 6.

(2) The term burgers the records indicate meant no more than proxy. (4) I Assem. 27.

creet, honest* men to be their deputies or burgesses. The majority vote was to elect.¹ When the assembly opened it consisted of the governor, five gentlemen specially summoned, and nine delegates from the hundreds.² Two men from the minority claimed admittance and the records state that their claim was recognized, but their names do not appear on the list as the roll was called each morning.³

An act was passed for the ordering of the assembly which to consist of burgesses sent up in accordance with the governor's writs of election, of gentlemen summoned by the Proprietary's special writ, and of all burgesses who had not assented to the election of the burgesses, together with the governor and secretary.⁴ This provision was awkward indeed. It allowed the Proprietary to pack the assembly and the minority to overrule the majority. The arrangement was only partly adhered to.

In 1640, October 12, the Assembly consisted of the governor, the secretary, gentlemen summoned by special writ, and from one to four burgesses from each hundred.⁵ In 1641 the arrangement was the same⁶, and the representative system appeared to be established for in the records of proceedings

it is related that Robert Vaughan was thrown out in a con-

(1) I Assem. 27, 32.

(4) I Assem. 74, 75.

(6) I Assem. 104-105.

(2) I Assem.

(5) I Assem. 87-89.

(3) Assem. 32.

tested election case, and "demanding to have a voice in his own person was refused."¹ No comments are left on this system. But in 1642, March 21-23, the writs of election called for a primary assembly, proxies, or burgesses, and the records indicate a primary gathering.²

Later in the year, burgesses were called and appeared³, and still later, all the inhabitants were summoned and fined for non-appearance⁴, and from December 16, 1642 to Nov. 16, 1644 the assembly was primary.⁵ This was the case also in 1648.⁶ But in 1650 Governor Stone summoned from one to three burgesses from each hundred.⁷ In 1654 under the Commonwealth commission the county was made the limit of representation,⁸ and so remained for the rest of the colonial period and the representative system was established.

5. The Separation into Two Chambers.

During these years the assembly besides becoming representative, had divided into two chambers. As has been said there is no direct comment on the working of the first representative arrangement, by which the house was to consist of the governor, burgesses from each hundred, and gen-

(1) I Assem. 105.	(2) I Assem. 113.	(3) I Assem. 125.
(4) I Assem. 167.	(5) I Assem. 199.	(6) I Assem. 219.
(7) I Assem. 259-61.	(8) I Assem. 342.	

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tllemen summoned by the Proprietary's special writ. But the Separatim, perhaps, is comment enough. On July 18, 1642, the year in which the assembly was both primary and representative in turn, Robert Vaughan, in the name of the assembly demanded that two houses might be formed, and the burgesses sit to themselves. The governor refused.¹ The records from 1642-1646 are most lost, but for 1646 mention of an Upper House consisting of the governor and two others is preserved.

"The burgesses being sent for and all appearing the governor declared to them that they were called hither as freemen to treat and advise in assembly touching all matters as freely and boldly without any awe or fear, and with the same liberty as at any assembly they might have done heretofore."²

After this one house only is recorded until April, 1650.

"Be it enacted by the lord Proprietor with the advice and consent of the council and burgesses....that....the present assembly....be held in an Upper and Lower House."³

The Upper House was to consist of the governor and any one or more of the councillors, the lower, of the burgesses. Bills were to be passed by both with the governor's consent.

In 1654, under the Commonwealth, no mention was made of two houses⁴, but in 1658 after the province was restored to

(1) I Assem.130. (2) I Assem.209. (3) I Assem.272.

(4) I Assem.340. (5) I Assem.371.390.393.

Baltimore two houses again appear and continue from that time.¹

6. The Sessions of the Assembly and the Apportionment.

The Assembly was summoned and prorogued at the command of the governor, and the apportionment was regulated by him.² The apportionment caused trouble once. In 1689 it was claimed that the Proprietary had packed the Lower House, by calling but two of each of the four representatives elected in each county.³ The right of convening was modified by acts directing the Assembly be called for three years, and by the passage of temporary laws. As these last often regulated fees and government support, the Assembly was sure to be called.

Against the right of prorogating there was some protest. In March 1642 the House declared that it could not be adjourned or prorogued without its consent, and the protest was read again in the September session.⁴ But it passed unheeded. The governor always had this power.

(1) I Assem. 50.

(2) Council 215.

(3) I Assem. 117, 180.

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7. The Franchise.

During this early period and in fact till 1670¹, the Province was exceedingly democratic. The following instances show that all voted and were eligible as deputies unless indented servants during their term of service were exempted. The session of September 1642 recorded:

"Mr. Thos. Weston being called pleaded he was no freeman because he had no land or certain dwelling-house here, and being put to the question it was voted he was a freeman, and as such bound to his appearance by himself or proxy?"²

In 1648, January 26, a curious case arose. One, Nicholas Gwyther, was denied a right to be in the house, by a member who claimed Gwyther owed him service. The House found no service due, but the account indicates no servant during his time of service could be admitted.³ If this was the case it appears to have been the only limit to the franchise up to 1670. Workmen often appeared, especially in the primary assemblies⁴, and the deputy need be nothing more than a "discreet, honest" man.

In 1656 a decree of the Council of Plantations restored the Province to Baltimore. He succeeded in subduing all

(1) Sparks. The Maryland Revolution p 1689. J.H.S. Vol.

(2) I Assem. 170. (3) I Assem. 218. (4) I Assem. 3. (5) I Assem. 27.

internal discontent still brooding and a period of thirty years or more followed in which the Proprietary government evolved from this period of experimentation which has been described took root. By 1656 events and practical workings had given the Assembly a share in the initiative, the house had been made representative and divided into two chambers, with the burgesses to themselves. They could elect their own speaker. All but servants were probably freemen and eligible as deputies. With a house to themselves and legislating power it was possible for the Lower House to interfere with almost every prerogative left to the Proprietary, if not to encroach upon his rights. Here then was where the people inserted the small end of the wedge, and for the rest of the colonial period this line of cleavage can be followed.

III. The Legislative Power As A Restriction on Proprietary Prerogative in General.

1. The Claim of the Lower House to Powers in the Province Similar to those Held by the Commons in England.

From the beginning the legislature threw restrictions upon the Proprietary. Before dividing into two chambers the Assembly regarded itself as bearing the same relation to the Province as the Commons did to England. After the Separation the Lower House claimed that its rights were like those of Parliament.

The proceedings of the first Assembly whose records are preserved, that of 1638, show that rules were drawn up for the ordering of that body. It was declared that all members should enjoy the "privileges of parliament" during sessions.¹ The next year an act concerning the calling of the assembly was proposed. It was to be called at least once in three years "to consult of the affairs and public good of this province, and for the enacting of laws and ordinances for the government of the same. And that the said freemen so assembled shall from and after the summoning

(1) I Assem. 8,10.

of such assembly or assemblies, until the dissolution of the same, have the like power, privilege, authority, and jurisdiction in this province as the House of Commons in the realm of England.¹ This enactment did not become a law, but it indicated the temper of the freemen. The spirit that animated it continued to survive. In 1689 the Proprietary and the Lower House struggled over various measures, till at last he sent it through the Upper House the following message: "further to declare to them that they are not to conceive that their privileges run parallel to the commons in the parliament of England, for that they have no power to meet but by virtue of my lords charter, so that if they in any way infringe they destroy themselves: for if no charter, there is no assembly, no assembly, no privileges. Their power is like the common council of London, which if they act contrary or to the overthrow of the charter of the city run into sedition and the personal questionable."²

The Proprietary never formally acknowledged this claim, but in very many respects the assembly was able to make it good, as the history of the various conflicts between the two powers will show. One or two more concrete examples will serve to make the case clearer:

(1) I Assem.75.

(2) II Assem.178.

At the time of the French and Indian war when in vain he had tried to induce the Assembly to raise supplies, Gov. Sharpe in a letter dated November 3, 1756 wrote to Cecilius Calvert, Lord Baltimore's secretary:

"I have long been persuaded thatt nothing to effect will be ever done by these colonies, unless an act of Parliament is made for obliging them to contribute their respective quotas and to exert their united force in defence of themselves and his majesties dominions. The Assemblies of Pa. and this Province more particularly have I think, sufficiently shown that they have nothing so much at heart and desire nothing more than to increase their own power and render the other branches of the legislature odious or contemptible. They perceive that nothing can be done without their concurrence and thence conceive a great opinion of their own importance. The oftener they are convened the less tractable they grow and become more extravagant in their demands on the government."¹

Again in 1758 he writes:

"Nothing less will content them - the Lower House - than to be invested with all the powers of government, legislative and executive."

The conclusion may be drawn from these examples, taken

(1) I Sharpe Cor. 506.

chronologically through the colony's history, that although the Lower House could not succeed in enacting laws asserting its supreme authority, by 1757, according to the testimony of a very able governor, it had passed almost beyond the Proprietary's control.

2. The Contest over the Discretionary Power of the Judges in Using the English Law.

Closely connected with the foregoing was another strife over the use the colony should make of the English Law.

The charter gave the colonists all the rights of Englishmen, but these rights had to be adjusted to new conditions. The charter further directed that the laws for the province were to be made within the province with the consent of the freemen.¹

In the earliest practice it has been shown that the Assembly as well as the Proprietary initiated legislation and assented to all laws passed. It often happened, however, that cases arose which no provincial law covered, and here was a difficulty. In 1638, during the struggle over the initiation, it was proposed that the colony should live temporarily under the law of England.² But the governor's

(1) Boz. II. 13 Charter Sec. 7 & 8.

(2) I Assem. 9.

commission of 1637 allowed the English law for civil cases only.¹ In the commission of 1642 is found much the same provision. He is to determine (except in cases of freehold) according to the laws of the Province, and in default of such laws, according to the laws of England, "as near as he can or may judge or determine thereof."²

In the commission of 1646 the governor and council were required to adjudge cases according to the laws of the province, and failing these "according to their best discretion in as ample manner as we ourselves were we present could inquire, hear and determine the same."³

That is outside of life, limb and freehold their instructions from the proprietary allowed the governor and council, in cases where the laws of the province did not apply to use in a discretionary manner the law of England.

So much for the Proprietary's instructions and the charter provision. The Assembly's legislation on the subject will next be considered. In the assembly of 1638 bills for civil causes and for the liberties of the people were passed, but ~~these~~ were in the code which the Proprietary disallowed. Their titles only remained.⁴ By the assembly

(1) I Council 53. (2) I Council 113. (3) I Council 156
 (4) I Assem. 20, 21.

of 1639, this act for the liberties of the people was passed in the House to hold till the next assembly:

"Be it enacted by the Lord Proprietary of this Province, of and with the advice and approbation of the freemen of the same that all the inhabitants of this province being chieftains (slaves excepted) shall have and enjoy all such rights, liberties, immunities, privileges and free customs within this province as any natural born subject of England hath or ought to have and enjoy in the realm of England by force or virtue of the common law or statute law of England (saving in such cases as the same are or may be altered or changed by the laws and ordinances of this Province.)¹

The same assembly passed acts regulating courts. The judges were to decide according to the provincial and English law. None of these acts, however, were recorded.²

In 1642 an act for the rule of judicature passed till the next assembly was accepted. It gave discretionary power to the judges to this extent. "In defect of a law of the province, usage or precedent, their right and just shall be determined according to equity and good conscience not neglecting (so far as the judge or judges may be informed thereof and shall find no inconvenience in the application

(1) I Assem. 41.

(2) I Assem. 46, 47, 39.

to this Province) the rules by which right and just useth and ought to be determined in England in the same or the like cases.¹

The laws of the province were of two classes, permanent and temporary. The latter were passed from assembly to assembly. The Acts of 1662 and of 1663 relative to this subject present some confusion. One allowed discretionary power, the other denied it, and McMahon thinks the two for a time were in operation.

The Act of 1662² was about like that of 1642, but that 1663 provided that,

"Where the law of the province is silent justice shall be administered according to the laws of England."³

In 1669 Lord Baltimore used his veto power, and disallowed a number of laws which had been operative in the Province for some years. Among these was the Act of 1662 which gave discretionary power to the judges. This is apparently what leads McMahon to conclude the two were in use at the same time. This fact would leave the Act in operation alone.⁴ In 1678 the Act of 1662 was formally repealed, and one adopted introducing the whole body of the English law, discretion being taken from the judges.⁵

(1) I Assem.147. (2) I Assem.448. (3) I Assem.487.
 (4) II,Assem.158. (5) III Assem. 86, 82.

This law did not operate to the satisfaction of the Proprietary. In 1684 he undertook himself to revive the laws of the Province, and laid before the assembly his revision. The law of 1678 was excluded from his code¹, and a warm contention arose over its omission. The committee appointed to consider the Proprietary's draft of laws held the act of judicature in discussion.² Later the Upper House submitted to the Lower a bill concerning judicature to which the Lower House made answer:

"They cannot assent to the bill sent from the Upper House for that purpose in regard th(at b)ill leaves too much to discretion which was the inconvenience designed to be prevented."³

Some days later the Proprietary himself who was then in the province sent a message to the assembly in which he made the following assertion:

"As to the alternative desiring to be made in the Act touching judicature, it is not safe to have justice administered according to the laws of England where the laws of this province are silent without due regard had by the governor or chief judge and the justices in court to the consistency of such laws....He deems it unreasonable to tie the freemen to

(1) IV Assem.11.

(2) IV Assem.32.

(3) IV Assem.94.

the laws of England and declares he will endure no bill which does not include discretionary power.¹ The previous acts therefore were suffered to expire as none for judicature appears among the assembly's enactments till 1692. So the matter remained without law till 1692. Meanwhile the Proprietary had lost his governmental jurisdiction over the Province by a decree against him in England, and a royal governor was exercising these functions. The Proprietary being thus silenced the law of 1678 was revived.² The Assembly's proceedings after 1692 are not accessible. But this was pleaded at least by 1700,³ and according to McMahon no further legislation took place on the subject during the suspension of the Proprietary although several disputes arose in practice: and the commissions to judges allowed them discretionary power to use the English law when applicable.⁴

A case comes to view in 1722 after the Proprietary was again in power which indicates that the trouble arose over land questions. All land being held directly from the Proprietary for quitrents, it is unlikely that the English law could always be seen to apply. The English statute for the limitations of actions of "trespass and ejectment"⁵ had been denied in the Provincial Court in two decisions, one

(1) IV Assem. 98, 99. (2) IV Asse. 483. (3) McMahon 119.
 (4) McMahon 119. (5) 21st. Jac. 1st. ch. 16th. McMahon
 quotes 121.

in 1712, and one in 1714, under the royal governor.¹ After the Proprietary was restored in 1715, the assembly in 1722 recognized the statute as applicable in the province. At the same session the Lower House drew up resolutions asserting claim to the benefit of the English law. In these resolutions a "committee of courts of justices was recommended clothed with power to examine the commissions issued to the judges and justices, especially with a view to learning what directions they received in regard to using the English law." The resolutions declared most emphatically for the whole English law outside the provincial. McMahon says that these resolutions became the Magna Charta of Maryland and that they were re-adopted at various times down to the Revolution.²

The proposal to investigate the judicial commissions was perhaps the boldest act of the Lower House up to this date. All commissions came from the Proprietary or his officers. It may be taken to indicate that the period of royal governorship from 1689 to 1715 had greatly weakened the Proprietary's influence and prestige. He held out for fifty years longer, but was clearly playing a losing game. The Upper House declined acting on the resolutions,³ and in 1723 the Proprietary's dissent to the Act of 1722 was an-

(1) McMahon 121.

(2) McMahon 122.

(3) McMahon 123.

nounced. He would accept no English statutes save such as his deputy-governor deemed useful. The contest continued for ten years and led to the formation of two distinct parties. The court party, led by the Upper House and adhered to by those favoring the Proprietary's cause. The other the county party, led by the Lower House, and followed by the people.¹ McMahon says:

"They did not rely on the right of Parliament to enact, but upon their own right to adopt and make their own all such of the English statutes as might be found beneficial or protective of their liberties."²

To put the case clearly, the Lower House claimed all English laws unless repealed by the assembly, the Upper House would have only such of them as the judges in each particular case saw fit to adopt. There was reason on both sides. With the peculiar land system to say nothing of other differences between Maryland and English conditions the interest of the Proprietary demanded discretionary power for the judges. Suppose the whole body were introduced, subject to selection by the Assembly. If the Upper House had the veto power, so did the Lower and the Proprietary would often be unable to induce it to annul English statutes opposed to

(1) McMahon 123.

(2) McMahon 124.

his interest. Alienation laws for instance, would not be in keeping. On the other hand the people could have no assurance of regularity or justice in the administration of their courts. They could not know on what to depend. If they adopted the whole code one by one the statutes would come up for their consideration, as cases were decided under them, and they could accept or reject as seemed best.

When the Proprietary's dissent had been received, the Lower House appointed a committee to examine what the practice of the colony had been in this regard. This committee reported that down to 1715 when the Proprietary was restored, the law of England had been used whenever applicable.¹ This may or may not have been true. Judging from the variation of the law regarding judicature which from 1642-1700, sometimes gave, sometimes withheld discretionary power, it is not possible to conclude the practice was all one way, but whether it was or not, on the strength of the repeal the Lower House proceeded to address the Proprietary.

"This addressed maintained that the statute in question was in force in the Province because it was a general statute without words of restriction, and therefore it extended to all his majesty's dominions: and because of the words of

(1) McMahon 124.

the charter, securative of their English liberties:" such statutes have always been held to extend to this province, and persons have even been convicted under them, and if their right to them were dependent upon their re-enactment in the Province, they would then hold them by the precarious tenure of his pleasure, in yielding or holding his consent."¹

In 1724 the Lower House reminded the Upper of the resolutions which have been quoted, and forced it to agree that the judges oath should accord with their resolutions. But later the contention over the oath was renewed and continued for a long time. Finally, though, the Lower House virtually triumphed.²

3. The Resistance to Proprietary Dissent.

After the Assembly was established in two chambers, the assent of the governor and both houses was necessary to the passage of the laws, and after this was obtained the Proprietary could dissent if he saw fit at any future time. In his commission of 1639 the Proprietary gave his governor directions to this effect.

In 1669 the freemen protested. This was a stormy discussion and it is necessary to recur to it many times.

(1) McMahon 125. (2) I Assem. 31.

The Proprietary denied his assent to certain laws which had been operative in the colony for some years. Through the Upper House he signified this decision to the Assembly. Whereupon it was agreed in conference that committees from both houses should draw up a list of grievances, to be considered by both, that if approved by both might be presented to the Proprietary. The two houses did not agree as to what should be considered grievances. But the Lower House's list contained the following:

1. "That there is no person authorized by the Lord Proprietary to confirm our laws."
2. "That it appears by the body of laws that the Lord Proprietary did assent to these general laws now dissented unto by the lieutenant-general, saying that his lordship doth will these to be laws and so subscribed his name, with book of laws, and therefore the same ought not to be dissented unto without the consent of this house."¹

This last resolution had reference to the signatures of laws which were signed by the governor as the Proprietary's deputy.

The Upper House replied that the charter bound the Proprietary to resume his assent to laws, otherwise he might en-

(1) II Assem. 168.

danger his charter. It declared the governor's signature in the Proprietary's name was merely a form. It in no way interfered with the Proprietary's right to annul a law whenever it seemed to him inexpedient. It continued:

"For that upon the whole matter we can not but exhort you to desire the Lower House that sent you to proceed to the public affairs of the province, and to tell them from the Honorable, the lieu and chief governor that if they do yet persist to call his lordships just rights of consenting or not consenting to laws in what manner he hath it by his patent his powers of erecting courts and officers and manner of proceeding in courts at his pleasure according to his patent and his appointing them the said officers just and reasonable fees the public grievances and unless he will redress these grievances, that is part with his royal jurisdiction granted by his patent to the assembly, they will not proceed to any business as they formerly voted, he desires them to call in all the members....and to put it to the question and upon their journal to enter every particular member's consent or dis-assent to that vote, and let the vote be signed by the speaker, that he may if he find they are resolved make an end of this assembly."

The Lower House was further directed to raze these re-

solutions from its journal. To this command it replied:

"The sense of this house is that until our grievances are redressed we cannot raze our journal."¹

After a long dispute the Lower House yielded and razed its journal.²

Before departing for England in 1684 the Proprietary agreed that when he was absent from the Province he would consider the laws within eighteen months from their passage. But in 1684 he declared this agreement should not bind his heirs.³

The Commissioner to the royal governor in 1692 required that all laws be sent to England for final confirmation within three months of their passage by the governor and two houses.⁴ In 1699 the Assembly passed a "law ascertaining the law of this Province" those laws to be considered valid were enumerated. The king's dissent to this was dated at the Court of Kensington Nov.30, 1699. During the session of 1700 the same act was repassed containing the same enumeration of laws and those passed at this session. This last act stood, why no further opposition was offered does not seem clear.⁵

(1) II Assem.177. (2) II Assem.180-184.
 (3) IV Assem.100. (4) IV Council 265.
 (5) Kitty.Laws of Maryland.Assembly June 28.July 22,1699,
 Chap. XLVI

In 1725 after Proprietary restoration, Charles Calvert dissented from the "Act for ascertaining the oath of Judge or Justice".¹ The same thing happened again in 1727² and in 1730³, and in 1732⁴. And a law for preventing bribery and corruption for those elected as delegates was also vetoed by the Proprietary.⁵ Under governor Sharpe the Proprietary dissented to laws, and the governor warned the Lower House that their inspection law which they were framing would meet the same fate unless the clauses limiting officers' fees, and regulating coin were struck out.

Thus four elements gave consent to legislation, and it appeared to the freemen to be more than necessary. The Proprietary's interference after his governor's and council's assent had been granted, served as an irritation, and angered the people against him, however justly he exercised his rights.

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- (1) Ib. Assem. Oct. 5. Nov. 6, 1725. Chap. I.
 - (2) Ib. Oct. 10-30, 1727.
 - (3) Ib. Assem. May 15. June 16, 1730. Chap. I.
 - (4) Assem. July 11. Aug. 8, 1732. Chap. V. & Chap. IV.
 - (5) I Sharpe 176.

IV. The Legislative Power As A Restriction Upon Proprietary Prerogative Through Control of Finances.

So far legislation on its general administrative or judicial side has been treated, but more important still does it appear when finance is made its engine. The Assembly early grasped the purse strings. By its power to vote supplies and fees it hampered free execution of proprietary prerogative in all directions.

1. The Proprietary's Undisputed Revenues.

The funds of the province consisted of land dues paid to the Proprietary, certain customs, and direct taxes levied by the Assembly for the pay of Assembly-men and the militia. The expense of every public measure that the Proprietary wished carried out must be provided for by the Assembly or met from his own revenues.

The Province was colonized under agreements called "Conditions of Plantation" issued by Cecil Calvert, the first Proprietary in 1636, 1642, 1648, 1649, 1669.¹ These differed in detail, but the land was all held directly from the Proprietary subject to quit-rents, to be paid to him in money or kind. The estates varied in size from fifty acres to

(1) I Council 47, 48, 99, 221, 223, 231, 233. II Council 54, 63.

several thousand.

The Proprietary's revenue consisted of quit-rents, caution money paid at the time of making a grant¹, alienation fines, and fines on devises.²

The quit-rents were collected by officers appointed by the Proprietary, and the collection bred discontent so that in 1671 the Proprietary agreed to commute them for an export duty on tobacco, 2 shillings per hhd. One shilling was to be reserved for the Proprietary instead of quit-rents, the other he was to have to meet the expenses of government and defence.³ In the royal period one moiety was left to him for his quit-rents, and the other to the royal government.⁴ In 1717 the Province passed a temporary law which was re-enacted till 1733 giving the Proprietary a compensation for his quit-rents and alienation fees.⁵ In 1733 this act was suffered to expire and until the Revolution the old system of collection prevailed. McMahon says, "Scarcely a session of the Assembly elapsed without some complaint of outrage or oppression on the part of the collectors of these rents, and every effort was made to induce the Proprietary to accept an equivalent for them."⁶

In 1735 the Assembly addressed the Proprietary in person

(1) II. Council 395. (2) McMahon 169. (3) II. Assem. 284.
 (4) McMahon 249. (5) McMahon 170. (6) McMahon 170.

requesting a commutation. In 1737 he replied that it was not aware of the increased value of his rents or a larger sum have been offered. In 1742 the Assembly met this objection and asked the governor to lay before it an account of the net annual revenue of the rents. This request received no response, so in 1744 it was proposed to give the Proprietary 2s.6d. on all tobacco exported. In 1745 he authorized the governor to accept an equivalent and the Assembly was given the statement of the annual value. The sum of L 5000 sterling was agreed upon and the money was to be raised by an export duty on tobacco and several other commodities. Nevertheless the governor declined to endorse the act and the people were forced to abandon hope of commutation.¹ The collection therefore continued and irritated the inhabitants, making the proprietary government more and more unpopular. Besides the Proprietary continued to collect the amount given in commutation. The constitutionality of this action was loudly disputed. In 1739² the Lower House asked an agent should represent the case before the king, and when this was refused it insisted the council be paid from the fund.³

(1) McMahon 171. (2) McMahon 177.
 (3) I Sharpe 401, 433.

2. Revenues to Which Both the Proprietary and the Assembly Laid Claim.

The land dues created discontent chiefly on account of the collection. The Proprietary's right to them does not appear to have been questioned. But there were revenues which both the Proprietary and Assembly claimed. There were put on tonnage duties; tobacco duty (the 1 shilling per hhd. allowed for quit-rents and after 1733 collected as well as the quit-rents); fines, forfeitures, and amercements¹; and the license fees. In 1646 a tonnage duty on tobacco was given the Proprietary to defray the expenses of the Ingle rebellion which had devastated the Province.² In 1681 an agreement was made between the Proprietary and the Assembly by which the act of 1646 was repealed, and the Proprietary given a part and anchprage. The Act was confirmed in the perpetual laws of 1676.³ In 1689 when the jurisdiction was lost to the Proprietary the crown still allowed him to collect it.⁴ This he continued to do until 1715, and from that time on it was disputed.⁵ In 1739 its collection was declared illegal. The Lower House claimed it was a portnot a fort duty, and that it had been repealed in the

(1) McMahon 175. (2) McMahon 176. (3) McMahon 176.
(4) McMahon 177. (5) I Sharpe 433. McMahon 177.

repealing act of 1704.¹

It wished the case tried be-

fore the king in council.²

This the Proprietary would never allow. This dispute led directly to resistance to British taxation.

The collecting of the moiety of the two shillings after he had refused it as a commutation of his quit-rents McMahon claims was styled "a tax without our consent." ³

The common law fines, forfeitures, and amercement were not disputed till 1745.⁴ Then the Assembly declared that the Proprietary received the revenue in public trust, and that he was bound to meet the expenses of government with it. He refused to apply it thus.

There was an elaborate report made on this revenue in 1765, by Philip George who afterward vigorously resisted the Stamp Act.

"From 1739 to the Revolution the claim of the Proprietary to these revenues was a continual cause of strife between the governor and the province. The journals throughout that period abound with resolves and addresses denying the Proprietary's right to them, and denouncing the collection of them as illegal and oppressive."⁵

The license fee was collected from hawkers, peddlars,

(1) McMahon 177. (2) I Sharpe, 433, 401. (4) McMahon 181.
(3) McMahon 180. I Sharpe 433. (5) McMahon 176.

keepers of ordinairies and ferries. This revenue was the cause of a heated contest, and of determined resistance. The Lower House seemed willing later to sacrifice the Province to the Indian ravages, rather than allow the Proprietary to refuse this revenue to the Supply Bill.¹

3. Direct Taxation.

The Proprietary was made by the charter commander-in-chief of the army, admiral, and high chancellor. All forces raised for the defence of the Province were under his direction. But the Assembly controlled here by its power to regulate the pay. In 1642 an Act of Assembly² provided that for a needed expedition against the Indians each hundred should furnish a quota of men, and maintain the same. The Assembly assessed the amount on each hundred by a direct poll tax. If the whole sum raised was not used, it was to be returned to the Hundred and then to the citizens. The Governor was to raise the forces subject to these regulations

In 1650 an Act³ was passed prohibiting the Proprietary from making war outside the Province without the consent of the Assembly, otherwise the freemen would be in no way obliged to assist in person or by estate. All charges for

(1) I Sharpe 232. (2) I Assem. 196. (3) I Assem. 302.

internal defence they agreed to bear by an equal assessment on the persons and estates of the inhabitants. In 1661 an Act allowed the Governor with the assent of the council to raise fifty men with arms and provisions. But the Assembly proportioned the men to the counties, and regulated the pay of both officers and men.¹ The governor and council were allowed to meet the expense by a direct poll tax on the Province.

In 1676 an Act of Assembly definitely regulated the militia, in respect to manner of enlistment, training etc. The Proprietary and council, or his deputy and council, might levy the charges equally on persons and estates, provided they called to their assistance "one of the delegates from each county and one of the burgesses from St. Mary's to see that the tobacco so to be raised be employed for defraying the necessary charge of the province, and to no other end."² Further the pay of officers and soldiers was determined. Without funds the governor or commander-in-chief was helpless. The soldiers and officers as has been said were supported by a direct poll tax. Such a tax was levied for the pay of the Assemblymen.

The Proprietary was allowed one shilling per hogshead on

(1) I Assem. 407.

(2) II Assem. 557.

all tobacco exported toward the expenses of government, but his officers for the most part were supported by fees.

To the Proprietary or his deputy belonged the appointive power. The Councillors, judges, sheriffs, justices, constables, surveyors and all officers held directly by appointment, and received commissions from the Proprietary. After the established church was introduced during the period of royal governorship, the churches were filled by the Proprietary. The Province was administered judicially by a hierarchy of courts, of which the provincial court was supreme. Each county had a court of regular judges, and individual justices of the peace for each district. The executive officer of the county was the sheriff, of the district, the constable. Each county also had a coroner. Connected with the land office were the surveyors. As all land was held directly from the Proprietary, this department was peculiarly under his control. None of these positions were elective. The Proprietary filled them, and they were usually filled by his relatives or personal favorites. The control of this patronage was the Proprietary's chief source of power.

The Assembly, though, exercised a control over their power. An act of 1642¹ erected courts in the province. The

 (1) I Assem. 183.

contention over the interpretation of law, and the use of English law in the Province has already been given. But these officers were not salaried and paid by the Proprietary, they were supported by fees, and these the assembly regulated. In 1638¹ a bill for the regulation of fees and for futures passed the House, but did not become a law.

In 1639² a like attempt failed. After 1642, however, the fees payable to the secretary of the Province, to the clerk of the county court, to the surveyor-general, and to the sheriffs and all officers were regulated.³ The amounts were changed from time to time, and generally the matter was settled amicably. But in 1770 the Act of 1763 which had been in operation expired. Whereupon the Lower House cut down the fees of the provincial secretary, commissary-general, judges of the land-office and others. The governor⁴ would not yield to this and prorogued the Assembly, and determined to regulate the fees himself through the ordinance power, and issued a proclamation to that effect.⁵ When next the Assembly met the Lower House addressed the Governor:

"If the proclamation may rightfully regulate the fees it has a right to fix any other quantum....to attempt to limit the right, after granting it to exist at all is contrary to

 (1) I Assem.21. (2) I Assem.57. (3) I Assem.162.II Assem.

(4) Ballinaire's leveler-in-law. 222, 392.

Gov.Eden.

(5) McMahon 382-383.

justice. If it has a right to tax us then whether our money shall continue in our own pockets depends no longer upon us but upon the prerogative."¹

The governor would not yield. He prorogued the Assembly which he never again convened, but the new elections of 1773 resulted in the complete triumph of the popular party. On this occasion the electors of Annapolis buried under a gallows the noxious Proclamation. On the coffin was inscribed:

"The Proclamation, the child of Folly and Oppression, born 26th Nov. 1770, departed this life 16th May 1773 and buried on the same day of the freemen of Annapolis."²

The controversy was waged till the Revolution which swallowed it up.³ It was the last contest between the Proprietary and people. Gov. Eden's daring Proclamation erected an excitement second to that over the Revolution itself.

(1) McMahon 395. (2) Pennsylvania Gazette. May 26, 1773.
 (3) McMahon 401.

V. Political Parties and Party Methods in the Eighteenth Century.

1. The Proprietary Party.

The Proprietary kept a following during the royal period, and even down to the Revolution quite a large number of the inhabitants upheld his cause. But after his restoration in 1715 ¹ his prestige was greatly lessened, and it took a deal of political manipulation to keep the government at all. Outwardly he avowed his prerogative, secretly he directed the council he filled and patronage distributed in his interests. He had violent opponents who worked for his overthrow. The people were against him and their opposition grew stronger each decade. Contests were waged over the judicature, over his right of dissent, over the pay of the council which was heartily disliked, and over the constitutionality of his collection of certain revenues. In 1722 in the dispute over the judicature, the Proprietary's party was styled the Court Party, that of the people the County Party.²

The Proprietary always sought to uphold his interests through men of estate and the patronage. At the time of

(1) McMahon, 271.

(2) McMahon, 123.

the protestant Revolution in 1689 he was accused of filling all lucrative offices with his relatives, and of packing the Assembly with his creatures.¹

The royal governor, Copley, was directed to nominate for the Council men of good estate, and to fill the offices with such, seeing that all were well-disposed to the crown.² He was to take care that none but freeholders voted.³ The qualification for electors since 1670 had been a fifty acre freehold, or a visible estate of forty pounds.⁴ On Jan. 31, 1731, Gov. Ogle wrote to Lord Baltimore:

"I think the places you have ought to be managed as much as possible not only to keep up your interest with the country gentry, but likewise to be given to such people as are capable of serving you well in their particular ports."⁵

This policy came out clearly under Governor Sharpe's administration. It recommended two men for the council by the following letter:

"He (Mr. -) has always manifested himself a firm friend to the government....during a great many years that he has

(1) Sparks, The Maryland Revolution of 1689, J.H.S. Council 1667-1689/8; 137. (2) Council 1687/8-1693; 272, 281.
 (3) Ib. (4) Sparks, The Maryland Revolution of 1689, J.H.S. Vol. XIV:77. (5) II Calvert Papers, 86.
 (6) I Sharpe 178.

represented Somerset County in the Assembly: the other gentleman, too, has proved himself a constant supporter of the government.¹ On another occasion Sharpe wrote to Secretary Calvert warning against a certain appointment:

"Having received advice of Mr. Chas. Goldsborough's intention to apply for a seat in the council, I thought proper to indicate to you that the family from which this gentleman is descended have always signalized themselves by their opposition to the government: and there is little room for his general behavior to suppose this gentleman's sentiments differ from his predecessors'."²

As the Council acted also on an Upper House of Assembly, it was necessary to select it carefully. Gov. Sharpe asked that able men be appointed who could hold their own "whenever a levelling house of Burgesses should be inclined to attack it."³

On one occasion he declared that the better class of citizens were disquieted with the Assembly's proceedings.⁴ Both the appointments and the patronage, however, were but poor proofs of support.

In 1729 the governor wrote to Lord Baltimore of the Council:

(1) I Sharpe 178. (2) I Sharpe 15. (3) I Sharpe 181.
(4) II Sharpe 105.

"I shall to the utmost of my power recommend such to that board, as shall be of most credit and use to it....But believe me, such men as ought to be chosen are not easily got, and few men care for an empty honor, attended with trouble without some recompense...The country refuse still to pay them even for attendance when necessary."¹

Gov. Sharpe declared his time was largely filled with dealing out offices and pacifying the disappointed.² Under Frederick, Lord Baltimore, the patronage appears not to have been used judiciously. He recommended favorites rather than political allies, and brought his cause into contempt.³

With great difficulty the Governor held his own. Under Sharpe's administration Secretary Calvert recommended that men from the Lower House be recommended to the Council. He would throw open the patronage to it that its "virulency might be abated."⁴ Later he sent elaborate directions to Sharpe to buy off, not the leaders, but their following, by promise of office. "No man," he recommended, "who behaves well in the Lower House should, at the end of that time, go unrewarded."⁵ Against these measures, in the first instance, the governor protested. He replied to Calvert:

(1) II Calvert Papers: 80. (2) I Sharpe 182, 184.
 (3) II Sharpe 352. (4) I Sharpe 183.
 (5) II Sharpe 380.

"I am persuaded to countenance the virulent in the Lower House or withdraw them from thence by giving them preference will be like beheading a hydra."¹

Later he appears to have made some effort to carry out the policy, but with indifferent success.²

The two parties presented candidates for the Lower House in the various counties, but the Proprietary could not muster a majority. Somerset County returned a member of that party for years.³ In 1759 nineteen votes out of forty-seven were cast for Proprietary interest.⁴ In 1765, and again in 1773, one Stewart of Annapolis lost his elections because it was said, "a strong suspicion was entertained of his political principles and court connections." In 1665 Sec. Calvert complained Stewart was not fairly dealt with regarding the election.⁵ But under Gov. Sharpe's leadership the Proprietary's cause was mainly sustained by the veto of the Upper House, yet the Governor did all he could to induce the Lower to yield. He appealed to it, he threatened it,⁶ he prorogued it,⁷ he dissolved it and called for new elections⁸ all to little purpose. His pet scheme was that

(1) I Sharpe 184. (2) III Sharpe 69. II Sharpe 427.
 (3) I Sharpe 178. (4) II Sharpe 330-332.
 (5) II Cal. Papers 260. Pennsylvania Gazette, May 26, 1773.
 (6) II Sharpe 394. (7) II Sharpe 330.
 (8) II Sharpe 257, 274.

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Parliament should coerce. Through Sec. Calvert he recommended that Parliament should raise funds in the Province. by imposing a poll tax, or by a duty on spirituous liquors, or by a stamp duty on deeds and writings. These "hints" as he called them were in a letter dated Sept. 15, 1754.¹ To Gov. Morris he wrote:

"The framing of a bill...has employed our people near a month it has not yet made its appearance but I have been told that due care has been taken to insert many clauses that will lay the Upper House under the necessity of refusing it." He declared the same thing going on in Virginia and then he added:

"I despair of seeing anything done by these southern colonies...until the Legislature of Great Britian shall take our condition under consideration and save our respective assemblies the trouble of providing for their own safety."²

He wrote to Londoun November 15, 1757,

"Indeed the superior class of people in every part of the province are much dissatisfied at the Assembly's proceedings and declare publicly that they should be well pleased if the legislature of Great Britian would ease the Assembly of the trouble of framing supply bills by compelling us by an

(1) I Sharpe 99. (2) I Sharpe 379.

act of Parliament to raise £20000 annually by a poll tax as the quota of this province toward carrying on the war.¹

This suggestion appears in a number of Gov. Sharpe's letters. There is no evidence, though, at hand, to prove that the Proprietary carried it out. There is one letter on the subject which shows that such a course might have been taken. Calvert writes to Sharpe December 10, 1754:

"The colonies have been dilatory in their supplies. The perverseness of the Assemblies has occasioned some of the governors to apply home for an act of Parliament to be obligatory on the colonies to contribute their quotas in defence of his Majesty's American dominion. The consideration of the government thereon, I can't say, however, it would be best the Americans did not subject themselves to tax from hence."²

The Proprietary interest, then, was sustained by the careful selection of a governor and council, by judicious distribution of patronage, at certain periods, by packing the Lower House, or by bribing its members. During the French and Indian war by threats of English displeasure, by persuasion, and by warning of Indian dangers the Assembly was urged to relinquish its claim to disputed revenues. No measure, however, proved at all effective but the veto of the Upper

(1) II Sharpe 105. (2) I Sharpe 135.

House. This branch of the Legislature was the Proprietary's chief dependence, and for this reason was an object of attack.

2. The Popular Party.

The Popular Party represented the democratic forces of the Province. In the 18th century, at least, it seemed also to hold a majority in the Lower House. McMahon says there is no instance in Maryland's history of the Lower House deserting the people's cause.¹ It was composed of four delegates from each county², and though called and dissolved by the governor and council, it chose its own speaker, sat to itself, and had freedom of debate and a part in all legislation. Whether or not the franchise was limited in practice to those having a freehold of fifty acres or an estate of forty pounds, the material at hand does not show, but in the eighteenth century high and low, ignorant and learned were among its members. Sharpe once wrote thus to Calvert of its composition:

"Few gentlemen will submit to the inconveniences as such a canvas for seats....must subject themselves to....there are too many instances of the lowest persons, at least men of

(1) McMahon 149.

(2) McMahon 148.

small fortunes no soul and very mean capacities appearing as representatives...And there would be no wantof gentlemen....if the drudgery of electioneering were to return less frequently."¹

He asserted that many delegates could scarcely write.² But again he asked for able men in his Council to meet the latent in the Lower House: "You know, sir, that few people will engage in a dispute with those whose superior capacity they are sensible of."³ In short there were leaders and a following in the body. On January 22, 1744, when a dispute over Proprietary dissent was going on, Gov. Bladen wrote to Baltimore:

"that they will grumble whenever a law they are desirous of is dissented to, may be expected, especially as it is the study of two or three men here to create uneasiness and excite dissatisfaction on every occasion."⁴

This party eventually sought nothing less than popular control of government, and Proprietary overthrow. There seemed to be no design of a return to this system of royal governors. Each decade from the time the Proprietary was restored in 1715 saw the demands of the representative body

(1) I Sharpe 68. (2) II Sharpe, 427.
 (3) I Sharpe 181. (2) II Calvert Papers 94.

become bolder till finally autonomy was desired. A review of the period makes this evident.

In 1722 the struggle centred about the right of discretion in using the English law which resulted in the judge's oath being worded as the Lower House demanded. In 1739 an agent to represent the people before the king in council to settle the constitutionality of the Proprietary's collection of the disputed revenues was demanded. When this was denied, the Lower House resorted to a device by which the Proprietary should incur the censure of the crown. It vetoed supplies in response to the royal requisitions for the French and Indian War, to be raised largely from these disputed revenues. The Proprietary must yield or seem to resist the king. Things had gone so far that by the time of the French and Indian War Governor Sharpe asserted that one branch of the Legislature was ready to take over the whole government. When it was thought England could aid against the Proprietary appeal to the king in council was urged, when, however, England undertook to interfere with internal affairs she too was resisted. The Proprietary government had seemed to make the colony very independent of England, and had given the colonists much experience in resisting what was deemed unwarrantable interference with their rights.

Governor Sharpe thus described the attitude of the Lower House:

"It manifestly tended to deprive the government of all power and to throw it entirely into the hands of the people."¹

"They assume all the rights of a British House of Commons and have for some years been exercising those rights in such a manner as tended to render all the inferior courts of judicature contemptible."²

He wrote to Baltimore January 1, 1758:

"They have, I find, taken abundance of pains to convince the people of the inutility....of an Upper House....and I have reason to believe that had they not given me an opportunity of stopping them in their career they would in a year or two offered their bills directly to myself instead of first sending them to the gentlemen of the Upper House...and their constituents would no doubt have been told that it was agreeable to the usage in Pennsylvania for them to do so."³

On May 14, 1758, the Governor wrote:

"Nothing less will content them than to be invested with the powers of government, legislative and executive."⁴

(1) II Sharpe 177.

(2) II Sharpe 124.

(3) Sharpe 125. It must be remembered that the Pennsylvania Colonial Assembly was

(4) II Sharpe 178.

By this time it called before it any officer it saw fit .
 In the letter of January 1, 1758, Sharpe wrote:

"Our Lower House of Assembly has indeed of late years claimed a right of calling before them any person they thought proper, and their commands have been generally obeyed though as generally exclaimed against as oppressive."

Now for the first time the Secretary was called.¹

All this seems to show plainly that it would only be a question of time till the Proprietary himself must yield either to encroachment or to force. He must become an ordinary citizen in a democratic community, or have his claims disallowed either by the people directly or by the crown.

Nothing brings out the relation of the two parties before the Revolution so clearly as the contention over the Supply bill for the French and Indian War, which therefore, may be treated as a whole.



3. Party Strife as Exhibited in the Contention over the Supply Bill.

In 1751, Frederick, the sixth and last Lord Baltimore, entered upon his inheritance. He was altogether unworthy of his good fortune, and was interested in his Province only as a source of revenue. He lived on the continent much of the time, never visited Maryland, and communicated with the government there chiefly through his uncle, Cecilius Calvert whom he made his Secretary, resident in England. His unpopularity was the immediate occasion for the strenuous resistance which arose to Proprietary prerogative from 1753 - 1770.

It is possible that he would have lost his Province before the Revolution had it not been that he happened to appoint a governor who was wise in administration and faithful to the Proprietary cause. In 1753 Horatio Sharpe was commissioned and he held the governorship till 1769. In the fall of 1753 the Governor called the Assembly in accordance with a letter from Secretary Holderness, directing him to raise supplies.¹ He endeavored to have an act revised

(1) I Sharpe 3.

which provided for a fund for arms and ammunition.¹ But the Lower House took this occasion to demand that the Proprietary should support the Council out of funds he was collecting.² On March 25, 1754, the Assembly again convened. It voted a sum of money for the Albany expedition at the suggestion of the Board of Trade and Plantations, "but," said Sharpe, "the method proposed for raising it could not be concurred with."³ The fact that Virginia had just voted £10,000 was quoted by the governor as an incentive. The method of the Lower House was simple. When a crown requisition was made, it responded heartily, voted supplies, and then framed a bill for raising funds calculated to throw opprobrium upon the Proprietary for refusing it, always taking care to appropriate some disputed revenue. On May 3, 1754, the governor wrote of the situation:

"You see that I am reduced to great straits by the people's determined resolution to make His Majesty's Service and his Lordship's interest clash."⁴ In 1758 he wrote:

"The truth is that their leading men....are anxious to bring everything into confusion in hopes that the crown will then think it necessary to interfere in some manner or other

(1) I Sharpe 8,44. (2) I Sharpe 48.
 (3) I Sharpe 56. (4) I Sharpe 62.

that might be disagreeable to his lordship."

"The people will be imposed upon and made to believe that the Upper House and the Governor are alone to blame and that it is entirely owing to the Governments of Maryland and Pennsylvania being in the hands of proprietors that money for His Majesty is not so readily granted in these provinces as in the other colonies."¹

Further proof of the plan to call England to the side of the people is seen in the device by which they tried to get their grievances before the crown. On the accession of George III, a conference of the two houses met to draw up an address of condolence and congratulation. To this the Lower House added as a rider a list of grievances the chief of which was that it was unable to raise supplies for the king's service since the Province was under a Proprietary. Upon the rejection of this addition by the Upper House the Lower House determined to send one of its own. The plan, however, was not carried out.² The Governor and Council were compelled to act alone.

But to return to the Supply Bill.

On May 2, 1754 Governor Sharpe writes to Cecil Calvert,

(1) II Sharpe 179. (2) II Sharpe 507, 517, 518.

Lord Baltimore's Secretary and agent:

"I must rest till a fair occasion offers for pressing it— a tax for the repair upon the Governor's home - to the Assembly....but cannot think of doing it till after the dissolution of this Assembly in November next as the incursion of the French on His Majesty's dominions oblige me to push them on the disagreeable business of granting money for that purpose."¹

By June 6, the Assembly had appropriated L500 as a gift to the Six Nations to keep them from the French alliance,² and had reluctantly consented to send delegates to the Albany Convention. Governor Sharpe writes of this:

"So insuperably indifferent or perverse were they that all they consulted was to save appearances and seem to be disposed to encourage the enterprise."³

At the same time L3000 were offered in aid of the other colonies, but this required the appropriation of the hawkers' and peddlars' licenses and the Governor refused to endure the bill.⁴ But by August 8, Washington had met with defeat and at the earnest request of Gov. Dinwiddie who was eager for funds, Sharpe had again met the Assembly and consented to the bill. The amount was increased to L60000.⁵

(1) I Sharpe 56. (2) I Sharpe 68. (3) I Sharpe 69.
(4) I Sharpe 68. (5) II Sharpe Cor. 80, 88, 89.

The Governor disregarded his instructions in allowing this appropriation of the license fees, but he saw that the other side would not yield, even though the case was urgent. Lord Baltimore when once the thing was done acquiesced for the time.¹ McMahon said of the situation:

"The Proprietary at that very time was collecting tobacco and tonnage duties although their collection had for years been denounced by the people as the exercise of an arbitrary prerogative usurping the power to tax, and that too for the private benefit of the Proprietary. Now he was advancing one step further toward prerogative and was assessing and claiming for his own benefit the amount received from grants of ordinary licenses."²

The danger touched the Proprietary more than the people, and this fact seemed to have been recognized as a means of bringing him to terms. The western region was principally threatened, and there the Proprietary had the more at stake. He could not sell lands, and many claims were abandoned. His revenue from this source fell off £1600 in one year.³ When the Assembly proposed to tax the Proprietary's estates as well as those of the freemen toward the defence of the Province, he would not consent although the Governor felt by

(1) I Sharpe 368. (2) McMahon 302. (3) I Sharpe 427.

yielding more would be gained than lost.¹ Since this bill was vetoed no further supplies were raised till 1756.

In January 1755 a bill for granting L 7000 passed the Lower House. It provided that L4000 of the amount be raised by an addition of that sum to the paper money of the Province.² In 1733 L90000 had been issued in paper with provision for its gradual redemption. By 1754 all was redeemed except L4000. The Lower House contended that this amount was lost or destroyed, and that their bill would not increase the sum that was to be redeemed.³ The Governor refused his consent. The Governor wrote to his brother John Sharpe a letter dated April 19, 1755 in which he said:

"I have appointed the Assembly to meet the twenty-second of March and once more presented my requisition for further supplies. The old obstacle has again prevented my succeeding, and after sitting and disputing a month about his lordship's prerogative they have given me evident demonstration that they never will grant a shilling without the compulsion of an act of Parliament unless the ordinary licenses

(1) I Sharpe 427.

(2) I Sharpe 158.

(3) Brown, The History of a Palatinate 223.

be appropriated contrary to his lordship's positive instructions and injunctions."¹

On June 28, 1755, L5000 was voted to be raised by the ordinary license fees. Sharpe would gladly have yielded but did not.² In a few days he prorogued the Assembly. Then came the news of Braddock's defeat. The Governor felt he must have money and he wrote to Calvert on July 15, 1755 of his next effort:

"You will suppose the news of General Braddock's defeat has thrown the people into consternation....We are encouraging subscriptions among the gentlemen and people for the.... protection of the frontiers whereby I expect to be able to raise 100 or 200 men....if the burgesses in the several counties do not oppose it as they lately did and persuaded the people that if the Governor should raise money by such methods they must not hope to have any more assemblies."³

But the subscriptions proved inadequate and in the following spring the Governor again called the Assembly. In March 1756 he wrote to Calvert:

"Inclosed is my speech to the Assembly at the opening of this session with the addresses of both houses and my answers in one of which you see I told the burgesses I concluded

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- (1) I Sharpe 202.
 - (2) I Sharpe 235.
 - (3) I Sharpe 251.

they would act like rational creatures and honest men....but I begin to fear that I did not know my men or that I said more than I believed."¹

After a heated contention² on May 27, 1756 Sharpe wrote to Calvert:

"I am now to inform you that the Assembly is at length broke up after having sat almost twice as long as ever an Assembly has been known....to have done before."³

The Supply Bill passed. It allowed a poll tax to be levied upon the Governor's agreement to allow a tax on the Proprietary's manors and unusual lands. L40,000 were thus to be raised.⁴ The fight for the ordinary license fees had up to this time caused five fruitless sessions of the legislature. Failing here the Lower House had struck at the Proprietary through the land tax.⁵

The L500 for the Indians, the L6000 appropriating the license fees, and the L40,000 which allowed a tax on the Proprietary's lands were all the funds raised. But from 1756 to 1763 Assembly after Assembly was called and the ground fought over. In the fall of 1758 the Governor called a new Assembly hoping that the Proprietary party might

(1) I Sharpe 385.

(2) I Sharpe 378,399,409.

(3) I Sharpe 418.

(4) I Sharpe 418.

(5) I Sharpe 424.

(6) I Sharpe 425.

gain some members, but nearly the same were returned.¹

By April 18, 1759 £80,000, was voted and a bill for raising it passed the Lower House by a vote of 28 to 19. This was rejected by the Upper House for the fifth time in eighteen months.² After this a bill for wholesale taxation was introduced. It attacked all offices, benefices of profit, professions and taxables in general.³ This was aimed not only at the Proprietary but at his following, at least that part of it which enjoyed his patronage. This bill was re-framed and rejected till 1761.

On April 25, 1762 Sharpe wrote to Egremont that the Assembly voted to supply the quota of troops demanded by the king, but by a supply bill eight times rejected by the Upper House.⁴

The war was now over and with nothing better to do with the ordinary license fees, the Lower House in 1763 appropriated the revenue to the College at St. Mary's, or else to the payment of the war debt.⁵ Again the Proprietary refused, and the fund was left unappropriated.⁶

The Supply Bill struggle lasted, then, from 1753 to 1763

(1) II Sharpe 257, 274.

(2) II Sharpe 330.

(3) Ib. 330.

(4) III Sharpe 47.

(5) At one time Col. Forbes had advanced pay to the Maryland troop looking for re-imburement.

(6) III Sharpe 194.

and was the direct foreunner of the resistance to the Stamp Act. Neither party had gained an outright victory. In 1765 Lord Baltimore was still obdurate. He wrote of the licenses, "The privilege of granting....them is the very essence of my prerogative....I can never be divested of without my own consent, which I shall most certainly never give."¹ Nevertheless his game was lost. The two parties came together over the English interference, the Proprietary, however, with timidity, as he feared the abrogation of his charter.

On February 26, 1765, Secretary Calvert wrote concerning the Stamp Act:

"Some American agents offered memorials....The clause in our charter against taxation was read by the grand financier....He observed the clause could be of no availment against the sovereignty of Parliament....I had taken pains to admonish some of the chief rank of speakers of the validity of that clause, but my endeavors proved fruitless."²

But in all the confusion of the period, it was not possible for the Proprietary to hold on. The Governor was not able to control the forces, and when hostilities finally broke out fled the country, and the Proprietary's cause was dead.

(1) II Calvert Papers, 256.

(2) II Calvert Papers 260.

VI. The Relation of the Colony to England.

1. Maryland and England till the French and Indian War.

Maryland, perhaps, was less connected with England than any other American colony. Her chartered rights were more absolute, and the charter was never annulled, though suspended in its full operation for a few years under the Commonwealth, and for some twenty-five during the period of royal government (1689-1715). The charter required allegiance to England, but exempted the Province from crown taxation. Baltimore had only to enact laws in harmony with the laws of England. Neither his enactments nor commissions were required to be submitted to the Privy Council.

Up to 1689, the points of contact between the two countries were the petitions or appeals and the Navigation Acts.

Virginia and Claiborne appealed against Baltimore's claim to the colony, and a decision was given to Baltimore in 1638.¹ The Province was restored to him by Cromwell in 1656.² But these decisions had no effect upon internal affairs. Under William and Mary, Protestant petitions took the rights of Government from the Proprietary, leaving him his territorial claims, but all were restored in 1715, when the heir had become a Protestant.

(1) I Council 71.

(2) Ib. 319.

Under royal government the crown's governor and council had part in all executive and administrative functions, and the laws were submitted to England.¹ In fact Maryland was about like any of the royal provinces. It was during this period that the system of "crown requisitions" was inaugurated whereby the different colonies were to contribute an assigned quota toward supporting a fort at Albany against the French. These unless the danger was very great, Maryland disregarded.² The royal governor, Nicholson, at one time, advanced L133 toward these requirements, at another, an agent was sent to New York with a contribution, but at the same time the complaint was made that Maryland had all she could do to protect her own borders.³

However, the colony did not escape the Navigation Acts. The execution of these appears to have been with the Proprietary, and the Lower House has left no record of resistance. Popular disregard was possible and evident. It was with the greatest difficulty that either the Proprietary or the crown established harbors in a country where navigable rivers flowed through almost every plantation. The Proprietary issued proclamations directing that only assigned harbors

(1) I Council 265.

(2) McSherry, History of Maryland, 100.

(3) Ib. 100.

should be used, in the interest of both the Navigation Acts, and provincial duties.¹ A royal decree of January 20, 1668 ordered regard for the acts², and in 1685 the king specially instructed Charles, Lord Baltimore, to observe these acts.³

The Lords of Trade and Plantation regulated the Maryland commerce as well as that of the other colonies.⁴

On March 12, 1687 the Council appointed a special court to try a case of violation.⁵ The system, then, was fastened upon the colony when it was weak, at a time when the Proprietary did not dare risk his charter by resistance. The measure though was regarded as a regulation of trade, and like so many of the legal fictions of the financial schemes of that century, served its purpose and was not seen to be a tax. Hence, when resistance came later to her avowed tax, England could not plead the Navigation Act as a precedent.

Burke said that the twenty-nine Acts of Parliament passed for commercial monopoly between the years 1660 and 1764 were all worded as measures for the regulation of trade⁶

The Crown requisitions were to be raised by assemblies.

(1) I Council 446, 468, 473. (4) IV Council 430.
 (2) II Council 46. (5) Ib. 9.
 (3) II Council 446.
 (6) Burke, Essay on American Taxation. 31.

After the restoration to the Proprietary in 1715 the Province again pursued its independent course.

2. Maryland and England During the French and Indian War.

The period of the French and Indian War brought the colony and the Mother country together again. The colonists were now incensed against the Proprietary and were eagerly looking toward England for redress, but there is no indication that they wished royal governors again. They were seeking autonomy, and when it was thought England could aid them to secure this, they turned to her against the Proprietary; when it was thought she was encroaching upon their freedom they were ready to resist her.

On August 28, 1753 Lord Holderness's circulated letter directed Governor Sharpe to draw out the armed force of the Province against the enemy, to correspond with the other colonial governors relative to mutual safety, and, if necessary, to call his assembly to contribute toward the common danger.¹ A letter dated September 18, 1753 to the governor from the Commissioners of Trade and Plantations directed him to require his assembly to grant a sum to the Six Nations and to send delegates to the Albany Convention.²

(1) I Sharpe 3.
(2) I Sharpe 82.

On October 26, 1754 Secretary Robinson wrote a circular letter by which Sharpe was commanded to provide for the troops which the king was about to send, and to fill out certain regiments and provincials: to provide conveyance by land and water, to allow officers to quarter troops as they should see fit, and to impress carriages. The charges to be met "by common fund to be established for the benefit of all the colonies collectively in North America."¹

The Assembly responded respectfully to Lord Holder-nesse's letter, but added "as there does not appear at present to be any pressing occasion for imposing a tax" they will not do so at this time.²

On February 26, 1754 the letter from the Lords of Trade was listened to, but it was not for some months that a sum was voted for the Six Nations³ and for defence⁴, the Governor having yielded toward the latter, after Washington's defeat, the ordinary license fees. But the delegates sent to Albany were instructed to consent to no plan of union and the requisition for a common fund was disregarded.⁵

These two sums and £40,000 in 1756 were all the Governor could ever raise since neither the Proprietary nor the

(1) I Sharpe 82.

(2) I Sharpe 107-108.

(3) Pennsylvania Gazette, Dec. 13, 1753.

(4) Pennsylvania Gazette, May 23, Aug. 1, 1754.

(5) I Sharpe 69. 81.



delegates would yield claims to certain revenues, as has been shown.

The £6000 was spent in aiding the Virginians¹, so that when Braddock's troops arrived there were no funds upon which to draw. In 1754 Governor Sharpe was appointed military commander of the colonial forces.² He called the Assembly hoping this fact would induce the Lower House to yield its contention with the Proprietary and grant the crown requisitions. But he was disappointed.³ He had been informed that the British troops were about to arrive, so he urged provisions and transports according to the Secretary's orders. The Lower House expressed the deepest interest in the king's commands, but begged the Governor to remember that it was but one branch of the legislature and could pass no measures alone. Thus, while holding to its determination to resist the Proprietary, throwing the opprobrium upon the Upper House.⁴ It did, however, provide for quartering and transporting the troops.⁵ But the impressment of carriages by the officers incensed the inhabitants greatly, and deep resentment was awakened.⁶

(1) Pennsylvania Gazette, August 1, 1754.

(2) I Sharpe 104.

(3) Pennsylvania Gazette, January 7, 1755.

(4) The Pennsylvania Gazette, March 25, 1755.

(5) Ib. April 10, 1755.

(6) I Sharpe 160.

Maryland was a centre for military operations at this time. In the spring of 1755 General Braddock, Governor Dinwiddie, Commodore Keppel, Governor Shirley, Governor De Lancey, and Governor Morris all appear to have been in the Province.¹ Gov. Shirley and Gen. Braddock urged Sharpe to call the Assembly and ask for supplies.² Braddock proposed that a western fort be garrisoned and supported by Virginia, Pennsylvania, and Maryland. The Governor presented this proposition, and the Lower House responded by a vote of funds to be raised by an increase of paper money.³ It appears, though, that some appropriation was made for patrolling the frontier when Braddock should have crossed the mountains.⁴ But neither the dangers threatening at home, nor the requests of the British general could induce either party to yield.

The British officers gave great offence by enlisting indentured servants.⁵ On March 3, 1756 Sharpe wrote to Shirley of this:

"At this time they (the Lower House) are employing a remonstrance against the proceedings of the military officers in enlisting servants....I shall be glad if their resentment

(1) Pennsylvania Gazette, April 17, 1755.

(2) I Sharpe 190.

(3) Pennsylvania Gazettes July 3, July 24, 1755.

(4) Ib. July 10, 1755.

(5) Pennsylvania Gazette February 26, 1756.



does not lead them to insert such clauses in the Supply Bill as will lay the Upper House or myself under the necessity of refusing it."¹

On February 23, 1756 Governor Sharpe begged the Lower House to comply with the royal requisition, to re-enact the law forbidding fire-arms to be sold to the enemy, and to pass an efficient militia law by which the inhabitants could be compelled to serve. Not till after Braddock's defeat were supplies voted, and then the Governor yielded a tax on the Proprietary lands.²

On February 16, 1758 the Governor laid a letter from Gen.Loudon asking for supplies before the Lower House, and on March 20 he read a letter from Pitt making a requisition.³ The clashing of Proprietary and popular interests blocked the passage of any supply bill and further Maryland refused to allow her troops to be marched out of the Province.

Gen.Loudon said of this refusal, Maryland is "single in the opinion of the king's power to march their troops into other provinces."⁴

In 1760 the commander at Lake Erie wrote for Maryland to furnish two hundred men, and in the following spring requisi-

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- (1) I Sharpe 380.
 - (2) I Sharpe 399.
 - (3) Pennsylvania Gazette, March 2, April 13, 1758.
 - (4) II Sharpe 122.

tions came from Egremont and from Amherst.¹ Egremont reproached the Lower House and to this reproach it made reply to the Governor:

"It is the particular misfortune of this Province to be without an agent at Home to represent the transactions of their delegates in their true light owing to the refusal of the Upper House to pass the bills which have been at almost every opportunity offered them for a support of a person of that character in London. And as that representation is so general, we must conclude that our most gracious sovereign and his ministers have not been truly and fully informed of the repeated generous offers of the people, heretofore made by their representatives, to raise very large supplies for his Majesty's service, by bills passed for those purposes, and constantly refused by the Upper House.²

Sharpe replied that he had sent to England the Journal of the Lower House, and the several bills on the subject offered to the Upper, and had recommended specially to Pitt the Journal of 1758 containing the dispute, suggesting that no funds were likely to be raised unless the question between the Proprietary and the Lower House were settled by the

(1) Maryland Gazette, March 18, 1762.

(2) Maryland Gazette, March 25, 1762.

king.¹ No act was passed.²

By this time the war was virtually ended. It was evident that Maryland would never consent to British direct taxation without the consent of the Assembly. Through all these years the Lower House had contended for the control of the purse strings, and had resisted Proprietary prerogative over disputed revenues even in the face of danger from the French and Indians, and in disregard of British requisitions.

3. The Resistance to Parliamentary Taxation for Revenue.

As has been said the dispute over taxation without consent was one that Maryland had well in hand through her long contention with the Proprietary over the revenues he collected in spite of popular protest. When England undertook the same thing the Province was immediately aflame.

On August 22, 1764 Sharpe wrote to Calvert that he feared the effect of the late Act of Parliament affecting the trade of the colonies. The act concerned Maryland in that it forbade drawbacks on certain goods exported from Great Britian, and placed an import on mines. As the tax was indirect he thought the people might not resist but that they would not bear a land tax. He added significantly that he

(1) Maryland Gazette, March 25, 1762.

(2) Ib. April 29, 1762.

had heard that the clause in the charter exempting Maryland from crown taxation "was causing conversation."¹

In November 1763 the Governor prorogued the Assembly until September 1765. In consequence of this Maryland's earliest protests to the Stamp Act came from the citizens at large. On July 11, 1765 resolutions were drawn up against the Act, and the lawyers raised a great cry on the grounds of the charter.² The agent appointed by Great Britain to distribute stamps was hunted out of the Province, and burned in effigy several times throughout Maryland.³

The Assembly was called in September, 1765. The instructions from Anne Arundel County to her delegates have been preserved and are as follows:

"Hence the foundation of our claim, to be effected by no law, nor burdened with any kind of tax but what is laid upon us by the assent of our representatives convened, agreeably with the fundamental laws of the constitution of our Mother country: our rights and privileges as Englishmen, declared and confirmed by our charter, and the interrupted usage and practice of our Province from the first settlement to the present time. And we do unanimously protest against our being charged in any other manner or by any other powers

(1) III Sharpe 175.

(2) III Sharpe 210.

(3) III Sharpe 222. McMahon 337, 338, 342.

whatsoever."¹

On September 28, 1765 resolutions of protest were passed unanimously by the Assembly, the Upper House and the Governor acquiescing. They rehearsed all their grievances against the Proprietary and his Council, and against England. They quoted the charter as exempting them from taxation, and asserted that the sole power of taxing them lay in the Lower House.²

Daniel Dulany, Secretary of the Province, wrote an able essay against the right of Parliament to lay a tax for revenue.³ Against England the Proprietary and popular interest was one.

Secretary Conway directed the Governor to use military force to put the Act into execution.⁴ The vessel bringing the stamps was never allowed to land her cargo in Maryland.⁵ McSherry says: "It is her proud boast that her shores were never polluted by the obnoxious stamps."⁶ Gov. Sharpe replied to Secretary Conway and explained the situation:

"Had I not been convinced that it would be impossible without a considerable military force, to carry the Act of

(1) Maryland Gazette, October 24, 1765.

(2) McMahon 345-348.

(3) Ib. 349, 354.

(4) Ib. 358.

(5) Ib. 358.

(6) McSherry, History of Maryland 153.

Parliament into execution here, while it was opposed so violently in the other colonies, I should have called upon Mr. Hood to execute his office and have promised to support him in the discharge of his duty."¹

On February 24, 1766 The Sons of Liberty were organized. The initiative came from Baltimore County, and a considerable number of the inhabitants met in Baltimore town. They agreed to repair to Annapolis in March and compel the officers "to proceed to business without stamped paper." The other counties were asked to organize in like manner. Baltimore, Kent and Ann Arundel Counties were represented. The chief justice of the Provincial Court, and the secretary, commissary general and judges of the land office were requested to open business by March thirty-first provided the northern colonies had done so by that time. The request was not regarded, whereupon the Sons of Liberty called upon all the counties to send a representative to meet in Annapolis on March 31.² The offices were opened and business resumed, ere the repeal was heard of.³ When news of this arrived the Assembly voted a marble statue to the "great and good Mr. Pitt", but as the Lower House in voting funds for this

(1) McMahon 358.

(2) Pennsylvania Journal March 20, 1766.

(3) McMahon, 360, 361.

asserted its sole right to tax, the Upper would not consent.¹

The Measures of Parliament in 1767 to tax imports to the colonies and appoint commissioners of inspection of colonial trade next met resistance. The British Government had warned the Governors to prorogue the Assemblies if they showed any disposition to unite², and Hillsborough cautioned Sharpe against siding with Massachusetts.³ When the Assembly met on May 28, 1768 the Lower House was prepared for this. The delegates considered what measures they would take, discussed the Massachusetts' circular letter, appointed a committee to draw up a petition to the king, and when the Governor's message came warning them, with everything done, marched in a procession to him and asked to be prorogued.⁴ The Non-Importation Society did good service. A Merchant in Glasgow wrote to his correspondent in Maryland on December 25, 1769:

"As there is no prospect of the Revenue Acts now in force in America being speedily repealed, I have, with other merchants, determined to send out no goods to Maryland, but such as are agreeable to the Association. As this is the case, the scheme to which you have prefixed the first and

(1) McSherry, History of Maryland 164.

(2) Ib. 164.

(3) III Sharpe 562.

(4) McSherry, History of Maryland 165.

second resolves of the people of your Province will be strictly adhered to.¹

On April 7 hearing that several ships were about to arrive from England the people of Prince George's County met and appointed committees to support the Association, and drew up resolutions to be published in the Gazette to announce their action to the other counties, and to the other colonies.²

On the twentieth of October, 1770 committees from Queen Anne, Talbot and Dorchester Counties, some gentlemen from the Council, the greater part of the representatives, some merchants from Annapolis, and gentlemen from the Province in general met at Annapolis, and drew up resolutions for publication condemning certain merchants of Baltimore who had resolved to disregard the Non-Importation Resolutions.³

On May 25, 1774 the inhabitants of Annapolis met in convention to organize resistance to the Act of Parliament blocking the Boston Harbor. They drew up resolutions of sympathy and planned to boycott any colony refusing to stop importation.⁴ They resolved to raise relief funds for Boston.⁵ On November 21, 1774 the Convention again met

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- (1) Pennsylvania Gazette, March 22, 1770.
 - (2) Ibid. April 19, 1770.
 - (3) Ibid, November 8, 1770.
 - (4) Pennsylvania Gazette, June 1, 1774.
 - (5) McMahon 407.

and approved the Continental Congress and Non-Importation Association.¹ To quote from the resolutions:

"Resolved: As our opposition of the settled plan of the British administration to enslave America will be strengthened by a union of all ranks of men in this Province, we do most earnestly recommend that all former differences about religion or politics and all private animosities and quarrels of every kind, from henceforth cease and be forever buried in oblivion. And we entreat, we conjure every man by his duty to his God, his country and his posterity to unite in defence of our common rights and liberties."²

A vessel from London having on board "seventeen packages of that detestible weed tea. The Non-Importation Committee from Ann Arundel called up the captain and consignes. The latter were made to burn the vessel."³ Maryland joined the Continental Association and in the summer of 1775 burned a vessel entering the harbor in disregard of this organization.⁴

The following is a letter from the British Surveyor of Customs at Annapolis:

"All America is in a flame. I hear strange language

(1) McMahon 411.

(2) Ibid 411.

(3) Pennsylvania Gazette October 26, 1774.

(4) Ibid, July 26, 1775.

every day. The colonists are rife for any measures that will tend to the preservation of what they call their natural liberty. I enclose you the resolves of our citizens. They have caught the general contagion. Expresses are flying from province to province."¹

Enough has been said to show that the resistance to England followed naturally enough. The protests offered against the Stamp Act as a tax without the consent of the representative body had been hurled at the Proprietary for fifty years. Only force could compel compliance, and to enable her to resist this force, Maryland, the colony which had been so independent as to refuse to allow her troops to leave her own territory for common defence, cast in her lot with the other colonies to shake herself free from all restraint. A statesman familiar with the political situation from 1715 when the Proprietary was restored, to 1765 when an English direct tax was imposed could have predicted a conflict.

There is no clearer evidence of the unfitness of Parliament to control the American colonies than the fact that its leaders were so little acquainted with colonial political experience and temper that they tried an experiment that anyone

(1) McMahon 403. Note.



who was acquainted with the situation could see would be resisted to the end. Maryland braved the Proprietary, braved the Crown, braved the devastations of the Indians during the French and Indian War, rather than yield to a tax without consent, and when England attempted to coerce her, with the other colonies to stand by her it might well be seen she would do nothing less than rebel.

If her political experience under the Proprietary had been consciously planned to prepare the colonists for resisting English taxation, it is hard to see how they could have been more effectively disciplined for that very thing. No new conflict arose, one side to the conflict changed, that was all, and the forces which were once directed against the Proprietary now faced the crown.

Order was not again restored. The government was put into the hands of a provisional Convention whose executive was the Council of Safety and Maryland fell in line with the other colonies to fight for the principles she had so long maintained.

List of Works Consulted.

Archives of Maryland edited by Wm. Gand Brown, Baltimore.

I. Assembly (1637/8-1664) 1883.

II. " (1666-1676) 1884.

III. " (1678-1683) 1889.

IV. " (1684-1692) 1894.

I. Council (1636-1667 1885

II. " (1667-1687/8) 1887.

III. " (1671-1681) 1896.

IV. " (1687/8-1693) 1890.

Correspondence of Gov. Sharpe 3 Vols. 1888, 1895.

" " " " 1895

Black, J. William, Maryland's Attitude in the Struggle for
Canada. In John Hopkins Studies, Vol. 10, p. 307.

Bozman, John Leeds, History of Maryland. 2 Vols. Baltimore
1837.

Brown, Alex., The Genesis of the United States. Boston & New
York, 1890.

Brown, William Hand, Maryland. In the American Commonwealth
Series Boston 1884.

Burke, Edmund. Essay on American Taxation. In Vol. II. 4th. Ed.
of Works. Boston 1871.



Calvert Papers. Fund Publications Nos.28, 34. Balliniare .
1889,1894.

Chalmers, George. Political Annals of the Present United X
Colonies.London 1780.

McMahon, John V.L. An Historical View of the Government of
Maryland.I Vol.Baltimore 1831.

McSherry, James, History of Maryland.Baltimore,1849.

Newspapers.

Maryland Gazette. Apr.- Dec.1760-1762 Jan.- Sept.1763.1767.

Pennsylvania Gazette Dec.1728.Oct.1729.:

Feb.1742. Sept.1743: Oct.1743. Jan.1747. Jan.- July 1750:

1753-1755: 1756-1757: Jan.- Oct.1758: 1759-63: Jan.- Aug.

1764: 1770-1775.

Osgood, Herbert L. The Proprietary Province as a form of
Colonial Government. In American Historical Review
(3 articles) Vol.II. and III.

Sainsbury, W.Noel. Calendar of State Papers,Colonial,Vol.I
(1574-1660) London, 1860.

Scarf, J.Thomas. History of Maryland, 3 Vol.Baltimore, 1879.

Sparks, F.B. Causes of the Maryland Revolution of 1689.

John Hopkins Studies.Vol.XIV p.477.

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